IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH, TWO THOUSAND AND FIVE

PRESENT

The Honourable Sri Justice V.Eswaraiah

WRIT PETITION Nos. 7639 OF 2004 AND 24352 OF 2004

WRIT PETITION No. 7639 OF 2004

BETWEEN:

1. Nirmala Kale W/o P.R.Kale, aged about 65 years, Occ: House-wife, R/o H.No.30-15, Tirumalanagar, Kanajiguda, Secunderabad.

2. John Sushil Kale S/o P.R.Kale, aged about 36 years, Occ: Engineer, R/o H.No.30-15, Tirumalanagar, Kanajiguda, Secunderabad.

…Petitioners

And

1. District Registrar, Hyderabad & Registrar of Societies, Office of the District Registrar of Assurances, Nizam Shahi Road, Hyderabad.

2. Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, N.B.K.Estates, Golconda X Roads, Hyderabad.

3. The Registrar of Societies, Office of The Commissioner & Inspector General of Registration and Stamps, A.P., Hyderabad.

4. The Society of Trustees of Indigenous Churches in India (Regn.No.114/1971), represented by its Governing Body, HEBRON, Musheerabad Road, Golkond X Roads, Hyderabad.

5. The Government of Andhra Pradesh, Revenue (Regn.-II) Department, Secretariat, Hyderabad, represented byits Additional Secretary.

6. R.Devasahayam S/o Abraham R/o Hebron Church premises, Golcond X Roads, Musheerabad, Hyderabad.

(Respondent No.6 is impleaded as per Court order dt.30-7-2004 in WPMP.No.16980/2004).

7. Bro.K.Martin S/o Late Sri Bro Solomon aged 60 years, Occ: Member of Hebron Church, Retd. Chief Engineer (P.R. Department), R/o 17-119/49, “BETHANY”, Wesley Teachers Colony, North Lalaguda Post, Secunderabad.

8. Bro.B.Balaram S/o Late B.Ksitaiah, aged 60 years, Occ: Member of Hebron Church, Retd. Chief Accounts Officer (P.R.Department) H.No.1-1-16/4, Jawahar Nagar, RTC X Road, Hyderabad.

9. Bro.R.Sambamurthy Nathaniel S/o Late N.Rangaswami, aged 63 years, Member of Hebron Church, Retd. Senior Auditor (Defence Accounts), 502 Parkview Apartments, West Marredpally, Secunderabad.

(Respondents 7 to 9 are impleaded as per Court order dated 24-09-2005 in W.P.M.P.No.22559/2004).

10. The Indigenous Churches in India Trust Hebron, Golconda Cross Road, Hyderabad.

11. Bro.K.Phillip S/o not know to the petitioner, aged about 83

years, occ: self proclaimed Governing Body Member of 4th respondent society & Self proclaimed Trustee of 7th respondent Trust, C/o Hebron Golconda Cross Road, Hyderabad.

12. Bro,G.T.Bejamine S/o Thirumalaiah, aged about 84 years, Occ: Self proclaimed Governing Body Member of 4th respondent Society & Self proclaimed Trustee of 7th respondent Trust, C/o Hebron, Golconda Cross Road, Hyderabad.

13. Bro.Theodore Reginald S/o not known to the petitioner, aged about 60 years, Occ: Self proclaimed Governing Body Member of 4th respondent Society & Self proclaimed Trustee of 7th respondent Trust, C/o Hebron, Golconda Cross Road, Hyderabad.

14. Bro. F.C.S.Peter s/o Not Known to the petitioner aged about 57 years, Occ: Self proclaimed Governing Body Member of 4th respondent Society & Self proclaimed Trustee of 7th respondent Trust, C/o Hebron, Golconda Cross Road, Hyderabad.

15. Bro.Paul Sudhakar S/o not known to the petitioner, aged about 50 years, Occ: Self proclaimed Governing Body Member of 4th respondent Society & Self proclaimed Trustee of 7th respondent Trust, C/o Hebron, Golconda Cross Road, Hyderabad.

(Respondents 10 to 15 are impleaded as per Court order dated: 24-9-2004 in W.P.M.P.No.21570/2004).

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare bye-law No.3 relating to membership i.e., Article 3 of Articles of Association of the 4th respondent society, as illegal, null and void and inconsistent or contrary to the provisions of the Andhra Pradesh Societies Registration Act, 2001 and consequently issue a Write more particularly one in the nature of Writ of Mandamus for directing the appropriate authority among The Commissioner and Inspector General of Registration and Stamps, the District Registrar and the Registrar of Societies to direct

4th respondent society to amend its bye-law No.3 (Article 3) relating to membership, so as to bring it inconformity with the Act, 2001 by incorporating the eligibility criteria and scrutinize the membership applications of the petitioners with reference to such criteria and to admit the petitioners as members or pass speaking orders in the event of rejection or alternatively to deregister the 4th respondent society

B) By holding the action of the respondents 1 to 3 in not exercising their jurisdiction vested in and directing the petitioners to approach other authorities under Section 23 of Andhra Pradesh Societies Registration Act, 2001 which has no application in the present case and to set aside letter No,.SOC/25779/2004 dated 03-04-2004 issued by respondent No.3 to both the petitioners separately as bad, illegal, irrational, misconceived, non application of mind, unconstitutional, besides being violative of the said act.

C) And/or direct the 5th respondent **to invoke its powers under Section 31 of** Andhra Pradesh Societies Registration Act, 2001 **and to direct the 4th respondent society to bring its bye-laws more particularly bye-law No.3 relating to membership inconformity with the said Act, 2001.**

D) To issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus.

For the Petitioners: Mr.C.Kodanda Ram, Advocate

For the Respondents 1 to 3 : G.P. for Co-operation.

For the Respondents 4, 10 to 15: Mr.D.V.Sitharam Murthy,

For the Respondent No.5 : G.P., for Revenue.

For the Respondent No.6 : Mr.J.Chandraiah, Advocate.

For the Respondents 7 to 9 : Mr.Bathula Raj Kiran, Advocate.

WRIT PETITION No. 24352 OF 2004

BETWEEN:

1. Bro.K.Martin s/o Late Bro.K.Solomon, 60 years, Member of Hebron Church, Retired Chief Engineer (PR.Dept) Resident of H.No.17-119, Bethan Wesley Teachers Colony, North Lalaguda Post, Secunderabad.

2. Bro.R.Sambamurthy Mathanial, Member of Hebon Church C/o Hebron Church, Musheerabad, Hyderabad.

…Petitioners

And

1. The Registrar of Societies, Office of the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad.

2. The Society of Trustees of Indigenous Churches in India, (Regd.No.114/1971) Rep.by its Governing Body, Hebron, Musheerabad, Hyderabad.

….Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, more particularly one in the nature of Writ of Mandamus, directing the respondents not to recognize any other person other than Bro.K.Habekkuk as Permanent principal Trustee of the society of Trustees of Indigenous Churches in India Regd.No.114/1971.

For the Petitioners : Mr.Bathula Raj Kiran, Advocate.

For the Respondents : G.P., for Co-operation.

The Court made the following :

-

-

-

-

-

-

-

-

-

-

-

COMMON ORDER:

Writ Petition No.7639 of 2004 is filed to issue a Writ of Mandamus, seeking the following reliefs:

1. To declare bye-law No.3 relating to membership i.e., Article 3 of Articles of Association of the 4th respondent society as illegal and contrary to the provisions of the Andhra Pradesh Societies Registration Act, 2001 (for short the Act, 2001);

2. To direct the Registrar of Societies to direct 4th respondent society to amend its bye-law No.3 (Article 3) relating to membership, so as to bring it inconformity with the Act, 2001 by incorporating the eligibility criteria and scrutinize the membership applications of the petitioners with reference to such criteria and to admit them as members;

3. To declare the action of the respondents 1 to 3 in not exercising their jurisdiction vested in and directing the petitioners to approach other authorities under Section 23 of the Act, 2001 as illegal and to set-aside the latter dated 3-4-2004 issued by the Registrar of Societies (3rd respondent) as illegal;

4. To direct the State of Andhra Pradesh (5th respondent to invoke its powers under Section 31 of the Act, 2001 and to direct the 4th respondent society to bring its bye-laws more particularly bye-law No.3 relating to membership inconformity with the Act, 2001.

Writ Petition No.24352 of 2004 is filed to issue a writ of mandamus, directing the respondents not to recognize any other person other than Brother K.Hebakkuk as permanent Principal Trustee of the second respondent Society.

Admittedly, none of the petitioners in both the writ petitions are the members of the said society. The petitioners in W.P.No.7639 of 2004 are seeking admission as members of the society. The petitioners in W.P.No.24352 of 2004 are also not members of the said society, but they stated that the original founder and managing trustee Brother Bakth Singh became sick and subsequently passed away in September, 2000 and the said Bakth Singh entrusted the management of the society to Brother K.N.Agustine and he too

become sick and he gave authorization letter to Brother K.Hebakkuk on 22-4-1999, who is the senior most member of God Servant of Hebron Church. Therefore, said Hebakkuk was acting as a principal Trustee of the said society since 22-4-1999 and became permanent principal trustee after the death of Brother Bakth Singh on 17-9-2000. Therefore, Brother Hebbakkuk alone has to be recognized as the principal trustee of the said society and no other person can be recognized as a principal trustee.

It is the case of the petitioners in W.P.No.7639 of 2004 that they are the believers of Lord Jesus Christ. The second petitioner is the son of the first petitioner. The 4th respondent society was registered as a public society on 22-2-1971 under the provisions of The Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (for short the Act, 1350 F), bearing registration No.114/1971. By Section 32(1) of the Act, 2001, the Act, 1350 F., was repealed, but the action taken under the Act, 1350 F., is however saved by Section 32(2) of the Act, 2001. The 4th respondent society was registered in 1971 for the purpose of reorganizing the movement of the indigenous churches in India, and with a view to regulate and supervise the churches, a central organization was required. The society was registered for availing the benefits which are available to a registered society like entitlement to acquire, hold and dispose of property, to enter into contracts, no personal liability, opening of bank accounts, income tax benefits etc. The said indigenous church movement had gained further momentum and thousands of indigenous churches existing in India and at various countries connected with and under the control, supervision and purview of the 4th respondent society.

It is stated that the petitioners contributed cash, property and donated a van to the society. After the ill-health of Brother Bakth Singh, the administration of the society has came to an impasse and deadlock and its affairs are in shambles. There is utter disorder, anarchy, divisions in the indigenous churches on some pretext or other, gross

mismanagement inter alia, wherein properties worth crores of rupees have not been registered in the name of the 4th respondent society in violation of bye-law No.9(a), misappropriation and diversion of power, funds and property, disobedience to authority, total arbitrariness, dictatorial tendencies, lack of democratic and transparent functioning in the affairs of the society, breach of bye laws, lack of answerability, abdication of responsibility, perpetual power struggle, self styled individuals claiming themselves to be founders of the indigenous churches, discrimination and gross irregularities, all of which are totally opposed to the public policy and public interest.

It is stated that as per the bye-laws of the society, all powers have been vested in the principal trustee Brother Bakth Singh, who passed away in September, 2000. With his demise, the bye-laws have become non functional and they require to be amended. Therefore, it became necessary for the petitioners herein to be admitted as members in order to keep a watch on the affairs of the society and to bring in a thorough reformation and to protect the interest of the society.

It is stated that the petitioners wanted to implead in the pending Original Petition and they filed I.A.No.2163 of 2002 in O.P.No.878 of 2000 on the file of the Chief Judge, City Civil Court, Hyderabad, but the said I.A., was dismissed on the ground that the petitioners are not the members of the society. They filed C.R.P.No.4447 of 2003 on the file of this Court and the said C.R.P., was also dismissed in December, 2003. Therefore, the petitioners have made formal applications for membership on 2-1-2004 and 4-1-2004 to the society followed by the reminders, but the society refused to accept the applications of the petitioners. The 4th respondent society was initially registered under the Act, 1350 F., and the bye-laws have been framed under the said Act and have been termed as Articles of the society. The State having noted the various omissions and flaws in the legislation relating to registration of public societies, enacted the Act, 2001. Various provisions intended to infuse responsible conduct on the part of the management of public societies have been

incorporated in this Act. The Act, 2001 required the bye-laws to be changed. Section 5 of the Act stipulates the provisions required to be set out in the bye-laws. According to Section 5 of the Act, 2001, the bye-laws shall contain provisions in respect of membership of the society i.e., eligibility, admission, withdrawal and termination etc.

It is stated that the contents of the bye-laws of the society registered under the Act, 1350 F., must be inconformity with Section 5 of the Act, 2001 and Section 5 of the Act is mandatory as provided by Section 32(2) of the Act, 2001. It is stated that Article 3 of the society do not conform to Section 5 of the Act and the bye-law do not contain any conditions with regard to eligibility, admission etc., of members to the society, but has left them to the whims and fancies of the governing body, which is nothing but arbitrary, capricious, discriminatory and cannot stand the test of law in view of the arbitrary and unbridled discretion conferred on the governing body without any guidelines for admission of the members. The governing body tend to freeze the membership of the society in order to create a monopoly for the existing members and they are not allowing any new members to be admitted. There are only 42 members on its rolls so far, though the society has two thousand churches connected with it and under its control and supervision and about a lakh believers in them.

It is stated that a public religious society cannot close its doors without allowing participation to like minded and interested religious persons. The society cannot close its doors, but can admit persons without prescribing any eligibility criteria and without having any guidelines. Therefore, Section 5 of the Act, 2001 provides that the bye-laws should contain the criteria for admission, eligibility etc., for membership of the society. In view of the in action on the part of the governing body of the society, the petitioners approached the respondents 1 to 3 vide their representations in March, 2004 to intervene and hold the inaction of the of the governing body of the society and to compel the said society to fall in line with the provisions of the Act, 2001 by incorporating the eligibility, admission, withdrawal and termination etc., in its bye-law relating to membership

and scrutinize their membership applications with reference to said criteria and consequently pass speaking orders. But, the Registrar of Societies vide his letter dated 3-4-2004 informed the petitioners to approach the District Court under Section 23 of the Act, 2001. The Registrar or the Registrar General has a statutory public duty cast upon him to examine the bye-law of the society with reference to the provisions of the Act, 2001 and if they are found to be contrary to or inconsistent with the said provisions, to direct the society to bring its bye-laws in line with the provisions of the Act, 2001 or alternatively to deregister the society.

The third respondent by the proceedings dated 3-4-2004 directed the petitioners to approach the Civil Court under Section 23 of the Act, 2001, but under Section 23 of the Act, a member of the society alone is entitled to approach under the provisions of Arbitration and Conciliation Act or may file an application in the District Court concerned in respect of a matter relating to the affairs of the society. As the petitioners are not the members of the society, they are not entitled to seek any relief under Section 23 of the Act and therefore, they have no remedy and in the said circumstances, it became necessary for them to approach this Court, seeking a direction against the respondents to take appropriate steps for amendment of the bye-laws of the society inconformity with Section 5 of the Act, 2001.

A counter has been filed by the society, stating that the general body of the society at its meeting held on 23-3-2004 passed a resolution, dissolving the society of trustees of Indigenous Churches in India and further resolved to transfer its assets and liabilities to the Indigenous Churches in India Trust. The society was dissolved and the Indigenous Churches in India Trust (for short the Trust) was constituted on 24-3-2004. The Trust was duly registered with registration No.46/2004 in the office of the Sub Registrar, Chikkadpalli on 24-3-2004. At present, the Trust is in management of the affairs of the erstwhile Society of Trusts of Indigenous Churches in India. Hence, the Writ Petition itself became infructuous. However, it is

stated that the petitioners have failed to set out violation of any fundamental or legal right or even legally protected interest and therefore, the writ petition is liable to be dismissed as not maintainable. The society was purely a private religious body. It lies within its competence to restrict membership on the basis of the religious tenets professed by the said society. The same cannot be called in question in a proceeding under Article 226 of the Constitution of India. Even otherwise the erstwhile Article 3 of the Articles of Association of the Society, which relates to admission of members is legal, valid and it is not inconsistent or contrary to any of the provisions of the Act, 2001. The Act, 2001 do not specify or set out qualifications or requirements for membership. Section 15 of the Act enumerates disqualification of members of a committee. As such, Article 3 does not in any manner contravene any of the provisions of the Act. Therefore, the question of issuing directions to respondents 1 to 3 to compel the 4th respondent society to amend its bye-laws does not arise. Any such direction would contravene the fundamental rights guaranteed under Article 19(1)(c) and also Article 26 of the Constitution of India. Therefore, the writ petition is not maintainable and no mandamus can be issued against a private religious body not vested with any public policy and not concerned with discharge of any public function. The petitioners failed to point out any violation of law. The society has been dissolved with effect from 23-4-2004 and it is not in existence and therefore, the question of issuing any direction to the society does not arise.

It is further stated that batch of civil cases were filed against the society, in which, the petitioners prayed to implead them in O.P.No.878 of 2000 and the said petition was dismissed, against which, they filed C.R.P.No.4447 of 2003 and the said Revision was also dismissed. It is stated that the society was not connected with the Churches established prior to 1970. The petitioners may be a worshipper in any of the indigenous churches, but for that reason, they could not have sought membership in the said society. As per bye-law No.3 of the society, any person who is a believer in Christ

can voluntarily join the society, but with the approval of the governing body. However, the grievance of the petitioners no longer survives as the society itself stood dissolved. The contribution made by the petitioners for the purpose of construction of indigenous churches namely Philadelphia Prayer House at Venkatapuram, Secunderabad was recovered by them by filing a suit O.S.No.284 of 2001 on the file of the Principal Junior Civil Judge, Ranga Reddy (North & East). However, the said society is no way connected with the aforesaid contribution and recovery of money. It is stated that all the allegations made against the society by the petitioners are absolutely false and all the allegations have been denied. Even after the death of Bakth Singh, the affairs of the society were carried on as per its Articles of Association and all the accounts were periodically audited. When Bakth Singh became ill, the original Articles were amended and the powers stood vested in the governing body. Therefore, it is incorrect to state that the bye-laws have become non-functional after the demise of Bakth Singh.

It is stated that the bye-laws of the erstwhile society were not in any manner inconsistent with or contrary to the provisions of the Act. The society was purely a private body and it does not discharge any public function, as such no writ lie against a private body. However, it cannot be said that the bye-law No.3 was without any eligible criteria. The petitioners cannot call in question the power of a body to regulate, restrict or even prohibit membership to it. It is incorrect to state that the petitioners are left without remedy. However, the petitioners failed to establish any right which can be enforceable or which can be appropriately remedied by the Constitutional Court to direct the respondents 1 to 3 to take such steps in the matter of determination of eligibility criteria for membership of the society as required under Section 5 of the Act, 2001. The right to membership in a body can be subject to reasonable restriction.

The writ petition was filed on 21-4-2004 and it was admitted on

23-4-2004 and the W.P.M.P., was posted after vacation. However, on 5-5-2004, this Court granted interim direction, directing the third respondent-Registrar of the Societies not to register the Trust until further orders.

As the respondents stated that the society itself was dissolved and the Trust was formed, the petitioners filed W.P.M.P.No.14850 of 2004 to add one more prayer in the writ petition to declare the notice dated 3-3-2004 issued by Brother K.Phillips as Chairman and Convener of the meeting and its consequential proceedings including the meeting held on 23-3-2004 at 11.00 A.M., at Patmos Prayer House, Puranapool, Hyderabad under the Chairmanship of Brother K.Phillip, governing body member as illegal, arbitrary, without jurisdiction and consequentially set aside the resolution passed in the meeting dated 23-3-2004. The said application was opposed by the society on the ground that the cause of action is totally changed and therefore, the amendment of the prayer cannot be allowed. The prayer in the writ petition is only to amend the bye-law of the society inconformity with section 5 of the Act, but whereas the prayer sought to be added is to declare the resolution of the society dissolving the said society and to transfer the assets and liabilities of the said society to the Trust as illegal. I am of the opinion that as the cause of action is different and new, the petitioners are not entitled to seek the amendment of prayer. The amendment is beyond the scope of the writ petitioner and pleadings are differed. If the said notice issued for convening a general body meeting and the resolution passed by the general body on 23-3-2004 dissolving the society and creating a Trust is illegal or contrary, they can challenge the same in any appropriate proceedings if they are entitled to do so in accordance with law, but the said prayer cannot be allowed to be added in this writ petition. Accordingly, W.P.M.P.No.14850 of 2004 is liable to be dismissed.

The learned counsel appearing for the petitioners vehemently submits that the writ filed by the petitioners against the action of the 4th respondent society and to direct the respondents 1 to 3 to amend

the bye-law of the society in conformity with Section 5 of the Act, 2001 is maintainable and unless the bye-law is amended, their right to get the admission in the society is deprived and therefore, the writ petition is maintainable.

On the other hand, the learned counsel appearing for the respondents submits that no statutory right or any legal right of the petitioners has been violated and therefore, the writ petition is not maintainable and it cannot be said that they are the aggrieved persons.

Before dealing with the said contentions, it is just and necessary to refer the memorandum of association of the society and its bye-laws. The aims and objects of the society are:-

i. To preach the Gospel of the Lord Jesus Christ individually and collectively;

ii. To establish indigenous Churches which are self governing, self-propagating and self-sufficient, according to the heavenly pattern revealed in the new testament in India and other countries as the Lord leads;

iii. To acquire or purchase lands or properties and construct buildings for the use of such indigenous Churches for their Gospel Meetings and other activities or for living quarters for God's Servants as the need arises;

iv. To strengthen the believers in such indigenous Churches through Gospel Campaigns, Special gatherings and holy convocations in various parts of India;

v. To give financial help to servants of God who are administering in the indigenous Churches;

vi. To fulfill other religious and charitable purposes.

The memorandum was originally signed by eight persons.

Article 3 of the society deals with the membership. As per Article

3 (bye-law No.3); all those who are the signatories of the Memorandum of Association of the Society, such other brothern, who voluntarily join the society with the approval of the said governing body of the society are the members. As per Article 4, the General Body of the said Association shall consist all those members mentioned in Article 3. The governing body shall consist of not less than five and not more than seven in number and the governing body will be formed by the principal trustee Brother Bakth Singh. All the properties must be registered in the name of the society and the property shall not belong to any individual or any member of the society. The property so acquired cannot be sold by such representatives, unless it is approved by the governing body, which is solely responsible for the maintenance of such properties. The governing body shall recommend such alienation only for the benefit of the society. All property affairs will be managed by the governing body. The general body is entitled to amend the Articles either by unanimous or with 2/3rd majority of the members present. In case of liquidation or winding up of the society, the properties of the society shall be transferred to a similar Christian Association performing similar functions as decided by the governing body.

As regards the law relating to the societies and their registration, the Registration Act, 1860, and Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 F., are repealed and a comprehensive legislation has been made by Andhra Pradesh Societies Registration Act, 2001. Section 2 of the Act, 2001 deals with the definitions. As per Section 2(b), 'Bye-laws' means, the bye-laws of a society. As per Section 2(h) 'Member' means, a person, individual or body corporate, who/which, having been admitted to membership in any society has not resigned or ceased to be a member, or been removed from membership, in accordance with the bye-laws of that society. As per Section 2(n), 'Society' means, a society registered or deemed to be registered under this Act. As per Section 3, any seven or more persons are entitled to form a society, which has for its object the promotion of art, fine art, charity, crafts,

religion, sports, literature, culture, science, political education, philosophy or diffusion of any knowledge or any public purpose may be registered under this Act. Section 5 deals with the bye-laws of the society. The bye-laws of a society shall contain provisions in respect of the following matters:

i. identity of the society which includes name and address particulars of the society;

ii. activities of the society;

iii. membership of the society i.e., eligibility, admission, withdrawal and termination etc.;

iv. General body which contains the manner of meetings to be held or convened, quorum, functions and responsibilities etc.,

v. ----------

vi. ----------.

If the society complies with all the provisions of the Act, 2001, as to the registration the Registrar shall issue the registration certificate. If the Registrar refuses to register the society, appeal shall lie to the Registrar General. As per Section 11, every society shall keep the register of members and enter therein the particulars like; name, address and occupation of each member, the date on which the name of each person was entered in the register as member, the date on which the person ceased to be a member and the specimen signatures of the members. The society shall maintain accounts and records. Section 15 deals with the disqualifications of members of the committee. Under Section 23, if there are any disputes regarding management arising among the committee or members of the society in respect of any matter relating to the affairs of the society, any member of the society is entitled to proceed with the dispute under the provisions of the Arbitration and Conciliation Act or may file an application to the concerned District Court.

Under Section 24 of the Act, 2001, a society can be dissolved by passing a special resolution with prior intimation to the Registrar and all necessary steps shall be taken for the **disposal and settlement of the property** of the society, and its claims and liabilities according to the bye-laws, if any of the society, and if there are no bye-laws, the general body is entitled in the manner as it finds expedite. If there is any dispute either with regard to the passing of the special resolution for dissolving the society or in the manner of dissolving the society and in taking steps for the disposal and settlement of the property or in regard to its claims and liabilities according to the bye-laws arising among the members of the Committee or the members of the society are entitled to refer the dispute to the Court. If the State Government is a member or contributory to any society, the society has to be dissolved with the consent of the State Government. Similarly, if the Central Government is a member or contributory, it shall be dissolved with the consent of the Central Government. Under Section 25, if upon the dissolution of the society, **there remains** after the satisfaction of all its debts and liabilities, any property, the same shall be delivered to some other society, with a similar objective to be named by a special resolution or in default thereof by the Court.

Court is defined in Section 2(d) of the Act. 'Court' means, in the cities of Hyderabad and Secunderabad, the City Civil Court and elsewhere, the Principal Civil Court of original jurisdiction. By virtue of Section 32(1) of the Act, 2001, the Societies Act, 1860 as it applicable to Andhra Area of the State of Andhra Pradesh and the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 F., are repealed and by virtue of Section 32(2), notwithstanding such repeal, anything done or any action taken under the Act 1350 F., (including any order, rule, form regulation, certificate or bye-laws) in the exercise of any power conferred by or under the said Acts (Registration Act, 1860 and 1350 F), shall be deemed to have been done or taken in the exercise of the powers conferred by or under the Act as if this Act was in force on the date on which such thing was done or action

taken.

A careful reading of Section 32(2) goes to show that all actions taken under the Act, 1350 F., including any order, rule, form, regulation, certificate or bye-laws are saved and shall be deemed to have been done or taken in the exercise of the powers conferred under the Act, 2001. Therefore, it cannot be said that the bye-laws of the society made under the repealed Act, Articles, Regulations and certificates are not saved. The main thrust of the petitioners is that Article 3 of the society is inconsistent with Section 5(iii). Article 3 of the society deals with the membership. As per Article 3 (bye Law No.3), all those who are signatories of the Memorandum of Association of the Society, such other brothern who voluntarily join the society with the approval of the governing body of the society are the members. That means, the bye-law prescribes the criteria for getting membership. All the signatories of the memorandum of association becomes members automatically and such other brothern who voluntarily join the society with the prior approval of the governing body of the society are also entitled for the membership. Therefore, it cannot be said that there is no any eligibility criteria prescribed for the membership of the society.

The criteria to become a member is that all the signatories of the Memorandum of Association are treated as members automatically and such other persons are entitled to become members with approval of the general body of the society. Therefore, it cannot be said that the bye-laws of the society are in contravention of Section 5(3) of the Act, 2001. There is a procedure prescribed for admission in the bye-law. As per Article 8(f), the principal trustee shall have the right to grant or withdraw membership in the society to any person or member. Thus, there is a power to terminate the membership also.

The learned counsel for the petitioners also contended that the society cannot be dissolved and dispose of its property in favour of a trust. Section 24 provides that after the dissolution of the society by passing a special resolution with the prior intimation to the Registrar and on such dissolution, all the necessary steps shall be taken for

the disposal and settlement of the property of the society. The society is entitled to take steps for disposal and settlement of the property of the society and also its claims and liabilities according to the bye-laws. If there is any dispute, there is a mechanism provided under proviso to Section 24(1). Even after the disposal and settlement of the property of the society and its claims and liabilities according to the bye-laws, there remains any properties after its dissolution and after satisfaction of all its debts and liabilities, the said property shall be delivered to some other society with a similar objective to be named by a special resolution. Sections 24 and 25 are independent sections. There can be a complete disposal and settlement of property of the society and its claims and liabilities under Section 24 itself. If after dissolution of the society and there remains any other properties after disposal and settlement of the properties and after settling the claims and liabilities of the society in accordance with the bye-laws, if some more properties are remained, they have to be transferred to a similar society having similar objectives. Therefore, I am of the opinion that the society is also entitled to create a trust and dispose and settle the properties of the society in favour of a trust having similar objectives for the better and effective management of the affairs of the society to achieve its aims and objects.

It is stated by the learned counsel for the respondents that the aims and objects of the trust are also similar to the society. The aims and objects of the trust are as follows:-

"3. (1) To propagate the gospel of Lord Jesus Christ and His teachings individually and collectively.

(2) To establish Indigenous Churches that are self sufficient, according to the heavenly pattern revealed in the New Testament, in India and other countries as the Lord leads.

(3) To acquire or purchase lands or properties and construct buildings for their worship services, children, youth and gospel meetings and other activities or for training centers and living quarters for God's servants as the need arises.

(4) To strengthen the believers in such indigenous churches through Gospel campaign, special gatherings, children and youth gatherings

and Holy convocations in various parts of India.

(5) To give financial help to the servants of God who are ministering in the Indigenous churches.

(6) To fulfill other religious and charitable purposes for helping orphans, widows and destitutes according to the Biblical principles as the need arises.

(7) To supervise, guide and govern the ministerial and other affairs of all the Indigenous churches in India and other countries.

4. Administration: The TRUST shall be administered by the trustees as follows:

(1) The Chairman: The Trustees hereby declare that Bro.Kuruvilla Phillip, S/o Late V.K.Phillip shall be designated as the Chairman of the Trust throughout his life. He shall be entitled to preside over all the meeting of the Trust and implement the resolutions of the Trust. The Chairman shall choose a Vice-Chairman, Secretary, Treasurer and other office bearers as and when need arises. The Chairman shall authorize the Vice-Chairman or anyone of the trustees to preside over the meeting and execute responsibilities in his absence.

(2) The Vice-Chairman shall discharge the functions which the Chairman shall delegate to him from time to time.

(3) The Secretary shall be entitled to ensure the maintenance of all the accounts of the Trust and shall keep true and accurate minutes of all the proceedings of the meetings of the Trust, which shall be signed, by the Chairman of the Vice Chairman or his nominee in his absence.

(4) The Treasurer shall maintain all the accounts of the Trust and shall be responsible for getting audited by a chartered accountant appointed by the Trust every year. He shall safeguard and maintain all the supporting vouchers, documents, pass books, balance sheets, books of accounts and other documents and shall present the same as and when required in the trust meetings

(5) The number of Trustees shall be five. They shall hold the office for their life.

(6) No Trust property can be acquired, sold or transferred by any trustee, his heir, relatives, or any such aspirants under any circumstances whatsoever.

(7) A Trustee cannot delegate his Trusteeship to anyone under any

circumstances whatsoever.

(8) Whenever a Trustee disclaims or dies or is for a continuous period of six months absent from India without the permission of the Trust or leaves India for the purpose of residing abroad, or is declared mentally and physically unfit, is declared an insolvent or accepts an inconsistent Trust, a new Trustee can be appointed in his place by the majority of the Trustees.

(9) The Chairman and all other Trustees are not liable for the acts of default and a breach of Trust committed by a co-trustee.

(10) The Trustees shall meet as often as required, if possible, once a month to implement the objects of the Trust effectively, and to carry on the day to day affairs of the Trust.

(11) More than half the total number of Trustees personally present at the meeting will form a quorum.

(12) The Chairman along with one or more Trustees will form Committees and sub-committees as and when required, to supervise, guide and suggest corrective measures under the purview and in the interest of the Trust, bringing to the notice of the Trust all such finding and suggestions. The Trust shall take final decisions and carry out the execution of the same.

5 . Powers: For the furtherance of the objects of the Trust, the Trustees shall have the following powers:

(1) A sum of Rs.1,000.00 (Rupees one thousand only) this day deposited by the Trustees of the Trust in the name of the Trust with any nationalized bank or banks shall be the nucleus of the Trust.

(2) To accept donations, free will offerings, titles, endowments, gifts or contributions from believers in the object of the Trust, in India and elsewhere, in cash or kind, properties moveable and immovable, foundations, bequests from any person/persons, establishments, organizations, institutions, churches and governments etc., for the furtherance and aims of the Trust, and upon such terms and conditions as the Trustees of the Trust may in their absolute discretion decide.

(3) The properties so acquired cannot be sold, unless it is approved by the Trust, which is solely responsible for the maintenance of such properties and in furtherance of the objects of the Trust. The Trust shall recommend such alienation only for the benefit of the Trust.

(4) To apply the whole or any part of the income of the Trust or the

Trust fund or the accumulation thereto to anyone or more of the objects of the Trust as the Trustees may in their discretion, deem fit from time to time.

(5) Nothing in this clause shall prevent the payment of the Trust in good faith or a reasonable remuneration to any of its officers and servants or any other person in return of any services actually rendered to the Trust.

(6) To pay for any rights or property acquired by the Trust and to remunerate any person or body corporate rendering service to the Trust and also to pay wages, salaries and other sums to any person(s) in recognition of services rendered to the Trust.

(7) To purchase, take on lease or in exchange, hire or otherwise acquire any property real or personal, moveable or immovable and any rights and privileges necessary for the promotion of the objects of the Trust and to construct, alter, improve and maintain any buildings or erections or other property necessary for the work of the Trust.

(8) To settle all accounts and to compromise, compound abandon or refer to arbitration any action or proceedings or disputes, claim, demand or things. As deemed proper for such purpose without being responsible for any loss occasioned thereby.

(9) The Trustees shall be accountable onlyfor such moneys, stocks, shares and funds as shall actually come into their hands and a Trustee shall not be answerable or accountable for the neglgect, default, acts of omission or commission of the other Trustees or any banker or other person with whom Trust properties or any securities may have been deposited or kept.

(10) To authorize any Trustee or Trustees or Officers or employees of the Trust to open and operate in any bank, any account in the name of the Trust and to close any such account.

(11) The funds of the Trust shall be invested in the modes specified under the provision of Sec.13(1)(d) read with Sec.11(5) of Income Tax Act, 1961.

(12) In the event of any law-suit, the chairman or his nominee who shall, at the expense of the Trust be competent to employ lawyers and attorneys for the purpose of prosecution and defence of suit and legal proceedings and the sign plaints, written documents, Vakalatnamas, affidavits and other papers in relations thereto as well as file or receive back documents and moneys belonging to and meant for the Trust and take all necessary steps as may be deemed

fit and expedient in the interest of the Trust.

(13) The accounting year of the Trust shall be the financial year ending on 31st March every year.

(14) To take over, acquire, manage, control or amalgamate with any Trust, Society, Association or Institution similar to the objects of the Trust on such terms and conditions as may be thought expedient.

(15) To open branches of the Trust in any place in India. Any Trust or Society already existing and willing to accept the administrative bindings of the INDIGENOUS CHURCHES IN INDIA TRUST, and execute in writing the valid document to the same effect can be considered as a branch with affiliation without encumbrances. Under no circumstance any church under the trust can form a separate trust, society or association nor register newly acquired properties in any name other than the Trust's name.

(16) To appoint, transfer, reprimand or set aside the full-time servants of God and to appoint, reprimand and set aside local responsible brothern to safeguard the principle and practice of the word of God for God's glory and to ensure and enforce discipline in all the churches under the Trust.

(17) A circular Resolution issued by the chairman on any subject and signed by the majority of the Trustees shall be in all respects as valid and binding as a resolution passed at a eeting of the Trustees duly convened and constituted and such resolution shall not be deemed invalid by reason of want of notice or any other cause whatsoever.

(18) The office of the Trust shall be situated at Hyderabad unless changed by the Trustees by two-thirds majority for valid reasons.

(19) To undertake and execute charitable Trusts in any place in India.

20. The Trust formed is irrevocable.

6. Indemnity: The chairman and every Trustee shall be indemnified out of the Trust fund against all losses and expenses incurred in discharging his officials duties.

7. Dissolution and Distribution of Assets:

If at any time, the continuation of the Trust shall appear to the Trustees for the time being, not to serve any useful purpose, the Trust shall forthwith be wound up and any assets remaining after the satisfaction of all lawful liabilities and claims against the Trust, the same shall under no circumstances be paid or distributed among the Trustees for the time being or former Trustees or for the personal benefit of anyone but shall be given to some other registered trust,

society, association or institution having the same object or objects similar to that of the Trust, to be determined by the Trustees".

Admittedly, 6th respondent is the member of the society and he participated in the special general body meeting of the society of Indigenous Churches in India held on 23-3-2004 at 12.30 P.M., and his signature is found at Sl.No.20. It is also pertinent to note that he has filed a letter dated 10-08-2004 after filing the implead petition, counters and several other applications, stating that he do not wish to continue as respondent No.6 in W.P.No.7639 of 2004. On account of the influence exercised by the first petitioner, he has signed the implead petition and also other petitions prepared by his counsel. However on proper and dispassionate consideration of the matter, he do not want to proceed against the society of Trustees of Indigenous Churches in India, which is in any way not in existence having been dissolved by the governing body in accordance with law. In a fit of emotion he filed the petitions and he do not wish to continue in legal proceedings against the church. Accordingly, he requested his counsel to withdraw the writ petition and the copy of the said letter was filed in the Registry, which became part and parcel of the record. However, he being the member has got effective remedy under the Act itself as provided under Sections 23 and 24 and therefore, it is not open for him to get any relief in a writ petition questioning the alleged statutory violations said to have been committed by the society.

Admittedly, the society is a private body and it is not exercising any statutory functions. Either the Registrar or the Registrar General has no power either supervisory or otherwise to take action against the societies in any particular manner. The Societies Act only deals with the law relating to the registration of the societies in the State of Andhra Pradesh promoting art, fine art, charity, crafts, religion, sports, literature, culture, science, political education, philosophy or diffusion of any knowledge or any public purpose and for matters connected therewith or incidental thereto.

The Act provides certain guidelines to form associations for its object to promote the aforesaid things and to get the society registered. If any formalities complied with by the society for its registration are not inconformity with the Act, the power given to the Registrar is only to reject to register it, but the Registrar has no power to direct amendment of any bye-law. Amendment of the bye-laws also vests with the societies by passing a special resolution. No doubt, the societies have to maintain the registers of the members, accounts, records etc., and file all the proceedings before the Registrar, but it cannot be said that the societies registered under the Act are the public bodies, exercising any statutory functions. None of the bye-laws or the Articles of the societies are statutory in nature and they do not exercise any public functions.

Therefore, the only question that arises for consideration as to whether the petitioners are entitled to maintain the writ petition and any legal or statutory right of the petitioners have been violated, giving them rise to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

I am of the opinion that the society registered either under the old Acts or under the Act, 2001, enjoys autonomy as a body corporate, subject to the provisions of its bye-laws, articles and it enjoys exclusive power to manage its affairs. Admittedly, there is no any financial assistance by the State. The society is purely a religious body registered under the Act. The Division Bench of this Court in the case of **Administration Staff College of India, Hyderabad Vs. D.P.Seshachalam** with regard to the maintainability of the writ petition against the Administration Staff College, which was also a society registered under the Societies Act, held that Administration Staff College is not a State so as to come within the purview of the other authority under Article 12 of the Constitution of India and therefore, writ cannot lie. The principle laid down in the said Judgment is equally applies to the instant case also.

Admittedly, a society is not a State within the meaning of Article

12 of the Constitution of India. Under Article 13 of the Constitution of India, all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part-III (Fundamental Rights) of the Constitution of India shall to the extent of such inconsistency be void. Under Article 13(2), the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of the clause shall, to the extent of the contravention be void. Under Article 13(3)(a) 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. The bye-law of the society cannot be said a law as contemplated under Article 13(3)(a). However, any bye-law in derogation of the fundamental right if it is inconsistent, only the inconsistency will be void. In the instant case, the petitioners are not vested with any fundamental right to get admission in the society. Under Article 19(1)(c), all citizens shall have the right to form associations or unions. The fundamental right is for the group of persons to form association, but there is no fundamental right provided to any individual seeking membership in such societies. Right to be a member of a society by a person is a fundamental right, but there is no fundamental right seeking admission into a society. Societies have their own bye-laws and regulations regarding the membership either to admit or not to admit. Right of admission is not automatic, but it shall be as per the bye-law of the said society only. The right to refuse the membership in a society by a society cannot be interfered with as it affects the fundamental right of the association under Article 19(1)(c) as well as Article 26 of the Constitution of India. Under Article 26(b) of the Constitution of India, subject to the public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Therefore any direction to the society to admit the petitioners will affect the fundamental right of the society to manage its own affairs in the matter of religion and the functions of the society as per its aims and objects. The citizens have a fundamental right to form associations or unions, but the individuals do not have any

fundamental right to become members of a society relating to the matters of religious affairs.

Admittedly, the society is not an instrumentality or agent of the State and it is not exercising any statutory power either in making or amending its bye-laws and therefore, no writ can be issued against the society. The rights granted under Article 19(1)(c) is a right to freedom given to the citizens to form associations. It has no reference to a right, which is conferred by a particular statute to act as a member of an association, which is the creation of the statute itself. Right to form association is a fundamental right, but right to get admission in the religious association is not a fundamental right. In all the Judgments cited by the learned counsel appearing for the petitioners, the petitioners therein are either the members and or in some of the cases, the vested or statutory right was violated. Theref69ore, those Judgments have no application to the questions involved these cases.

Therefore, the only question that arises for consideration as to whether the petitioners have any statutory, legal or fundamental right to enforce the statutory public duty. Even if a particular society cannot be characterized as a State within the meaning of Article 12 of the Constitution of India, even so, a writ would lie against it to enforce a statutory public duty which a person is entitled to enforce. What is the material is the nature of the statutory duty placed upon it. Admittedly, the bye-laws of the society have no force of law and they are not statutory in nature. If the bye-laws of the society do not have any statutory force, and as the society itself is not exercising any statutory functions and it being not an authority within the meaning and for the purpose of Article 226 of the Constitution of India, a writ would not lie against it as the society is not enforcing any statutory public duty. The petitioners are seeking to issue a writ of mandamus. A writ of mandamus is not available to enforce the private law right.

Though the petitioners do not have any remedy under Section

23 of the Act, but it cannot be said that they have no right to file a civil suit. However, mere infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of mandamus. This Court while dealing with the discretionary power to issue a writ of mandamus in the case of **Kalasagaram, Secunderabad Cultural Association Vs. State of Andhra Pradesh and others**, held in para 14 as follows:-

> **"Even if it is to be assumed that the impugned order suffers from some infirmities, should the Court grant relief to the petitioner and issue writ as prayed for? Whether the petitioner is entitled for any relief from this Court ? It is settled law that this Court does not issue writs in exercise of its jurisdiction under Article 226 of the Constitution of India is also a Court of equity. The relief to be granted in exercise of such power is an equitable one. Mere infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of Mandamus. The Court of equity when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always know to defend the law from crafty evasions and now subtleties invented to evade law. Writ of Mandamus is highly discretionary remedy as the aggrieved person has to not only establish the infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of a judicially enforceable right. The existence of a right is the foundation of the jurisdiction of Court to issue a Writ of Mandamus".**

Therefore, I am of the opinion that the 4th respondent society in W.P.No.7639 of 2004 is not a State within the meaning of Article 12 of the Constitution of India amenable to the Writ Jurisdiction and the group of citizens alone have fundamental right to form association under Article 19(1)(c) of the Constitution of India and such association is entitled to manage its own affairs in the matters of religion under Article 26(b) of the Constitution of India and therefore, single individual do not have any fundamental right seeking admission in such association and any such admission will be only as per the bye-laws, Articles and Regulations of such association

restricting the admission. Citizens will have a right to refuse to admit in any such association, but single individuals have no fundamental right to get admission as a matter of right.

The petitioners have failed to set out violation of any fundamental right or legally protected right to issue such a direction as prayed for by them, directing the official respondents in turn to direct the association either to amend its bye-laws or to direct the society to admit the petitioners in the society.

For the aforesaid all the reasons, I do not see any enforceable statutory right in favour of the petitioners entitling them to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to issue a Writ of Mandamus. The application filed to amend the writ prayer in W.P.No.7639 of 2004 is dismissed.

Accordingly both the Writ Petitions are dismissed. No costs.

_____

V.ESWARAIAH, J

Date: 16-03-2005.

Note:-

L.R.Copy to be marked

B/o

Shr.

Asst.Registrar.

One fair copy to the Hon'ble Sri Justice V.Eswaraiah (for his

Lordship's kind perusal)

Copies to:-

1. The District Registrar, Hyderabad & Registrar of Societies, Office of the District Registrar of Assurances, Nizam Shahi Road, Hyderabad.

2. The Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad, N.B.K.Estates, Golconda X Roads, Hyderabad.

3. The Registrar of Societies, Office of The Commissioner & Inspector General of Registration and Stamps, A.P., Hyderabad.

4. The Society of Trustees of Indigenous Churches in India (Regn.No.114/1971), HEBRON, Musheerabad Road, Golkond X Roads, Hyderabad.

5. The Additional Secretary, Government of Andhra Pradesh, Revenue (Regn.-II) Department, Secretariat, Hyderabad.

6. The Indigenous Churches in India Trust Hebron, Golconda Cross Road, Hyderabad.

7. Two CCs., to the G.P., for Co-operation, High Court Buildings, Hyderabad.

8. Two CCs., to the G.P., for Revenue, High Court Buildings, Hyderabad.

9. Eight L.R. Copies.

10. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs Department, New Delhi.

11. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

12. Two C.D. Copies.